IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

AS.No. 435 of 2001(C)

OS.194/1996 of SUB COURT,KOZHIKODE
.....

APPELLANT/DEFENDANT:

SASIDHARAN KOLATHAYI,
S/O.MADHAVAN NAIR,
ADVOCATE, COURT COMPLEX,
CALICUT 673 032

BY ADV. SRI.K.M.JAMALUDHEEN
SMT.LATHA PRABHAKARAN

RESPONDENT/PLAINTIFF:

LIFE INSURANCE CORPORATION OF INDIA,
DIVISIONAL OFFICE, HUSUR ROAD,
KOZHIKODE, REPRESENTED BY ITS
PRINCIPAL OFFICER AND THE DIVISIONAL MANAGER

BY ADV. SRI.E.SUBRAMANI (SR.)

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD
ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

KURIAN JOSEPH & K.T.SANKARAN,JJ.

A.S.No. 435 of 2001 and C.M.P.No.3100 of 2001

Dated this the 13th day of March, 2007

JUDGMENT

Sankaran,J.

C.M.P.No.3100/2001 is an application to condone the delay of 513 days in filing the appeal. As per order dated 22-11-2001 the application was allowed on condition that the petitioner shall deposit a sum of Rs.50,000/- within six weeks from the date of the order. It was stated in the order itself that the court was not satisfied that there exists any ground to condone the delay in filing the appeal. The direction to deposit was given, as stated in the order, to ascertain the bonafides of the judgment debtor to prosecute the appeal.

2. The order dated 22-11-2001 was not complied with. Necessarily the application shall stand dismissed without any further order by the court. The petitioner filed I.A.No.669/2007 on 20-2-2007 to declare that the petitioner has complied with the conditions imposed in the order dated 22-11-2001. The contention raised in the affidavit accompanying the application is that the petitioner had given as

security two policies and that subsequent payments of Rs.10,000/-, Rs.21,350/- and Rs.1,900/- were made respectively on 27-1-1994 and 8-7-1994. It is contended that these payments were not accounted and if these payments are taken into account it could be seen that the interim order has been complied with. The same contention was raised in the written statement filed by the petitioner herein. There is no dispute that two policies were given as security for the loan for Rs.1,50,000/- taken by the petitioner from the plaintiff. His contention in the written statement was that he had paid Rs.10,000/-, Rs.21,350/- and Rs.1,900/-. That contention was considered by the trial court and held that even going by the contentions raised in the written statement those payments were made towards the policies offered as security and not towards the loan transaction. Therefore, the contention raised in the present application, namely I.A.No.669/2007 is bereft of bonafides. Moreover, it is pointed out by the respondent that on maturity of the policies the decree-holder has deducted the amount payable under the policies and the Execution Petition has been filed only for the balance amount. Therefore, there is no unjust enrichment as contended by the

petitioner.

3. There is no merit in the appeal as well, in view of the facts stated above. The petitioner has not complied with the order dated 22-11-2001 passed by this court. On the other hand, he has put forward a contention that it must be treated that he had complied with the order. This contention is raised only on 20-2-2007 by filing I.A.No.669/2007. We are satisfied that the contention raised by the petitioner is bereft of bonafides. The order dated 22-11-2001 is a self working order. Therefore, C.M.P.No.3100/2001 is dismissed. Consequently,the appeal is also dismissed.

(KURIAN JOSEPH, JUDGE)

(K.T.SANKARAN, JUDGE)

ahg.

KURIAN JOSEPH &
K.T.SANKARAN, JJ.

A.S.No. 435 of 2001 and
C.M.P.No.3100 of 2001

JUDGMENT

13th March, 2007